

REMARKS AND ARGUMENTS

This Response is considered fully responsive to the Non-Final Office Action mailed June 12, 2009. Claims 1-51 were pending in the application. The Office has rejected claims 1-34 and 45-51 and objected to claims 35-44. In this Response, no claims are canceled and no new claims are added. Furthermore, claims 1, 4, 20, 23, 25, 26, 29, 45, 48, 50, and 51 are amended. Claims 1-51 are now pending in the application. Reexamination and reconsideration are requested.

Nonstatutory Double Patenting Rejection

Claims 1, 4, 5, 26, 30, 31, and 51 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 4, 7-9, 13, and 16-20 of copending Application No. 10/955,557. The Applicants acknowledge these provisional double patenting rejections, and will address these double patent rejections when either this application or the '557 application is allowed. In accordance with MPEP 804(I)(B), the Applicants also request that this provisional rejection be withdrawn if after considering this response, the Office determines that the application is in a condition for allowance and the '557 application is still pending.

Claim Rejections – 35 U.S.C. § 101

Claim 51 stands rejected under 35 U.S.C. § 101, because the claimed invention is directed to non-statutory subject matter. More specifically, the Office asserts that claim 51 defines a system that the Specification indicates may be embodied in pure software. While the Applicants do not agree with the Office's characterization of claim 51, in the interest of prosecution expediency, the Applicants have amended claim 51 to include "a processor." The "processor" now referenced in claim 51 refers to at least processor 901 of FIG. 9, which is hardware. Further, the "processor" is discussed on at least pages 34-36 discussing FIG. 9 of the application as filed.

Claim Rejections – 35 U.S.C. § 102

Claims 1-9, 20-34, and 45-51 stand rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 6,434,269 to Hamburg (the "Hamburg reference"). Regarding

claims 1, 26, and 51, the Office asserts that Hamburg teaches “[s]ampling pixels in a first region within a tool impression in a digital image to determine a first distribution of a pixel property of the pixels in the first region” and “[s]ampling pixels in a second region within the tool impression[] to determine a second distribution of the pixel property of the pixels in the second region” While the Applicants respectfully disagree with the Office’s interpretation of claims 1, 26, and 51, in the interests of prosecution expediency, the Applicants have amended claims 1, 26, and 51 to recite “sampling (samples) pixels in a first predefined region of a tool impression” and “sampling (samples) pixels in a second predefined region of the tool impression” (emphasis added).

As stated in MPEP § 2131, to establish an anticipation rejection, each and every element as set forth in the claim must be described either expressly or inherently in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

In the Office’s Response to Arguments Section 3, the Office asserts that “Hamburg does reference multiple regions (note col. 6, lines 39-40, referring to a background color and a foreground color).” The Applicants do not dispute that Hamburg discloses a background and a foreground. However, claims 1, 26, and 51 now recite a “first predefined region” and a “second predefined region” “of a tool impression in a digital image.” An example of the predefined tool impression recited in claims 1, 26, and 51 is illustrated in FIG. 4 of the present application as a circular tool impression with a sampling region 416 (e.g., first region) and an outer region (e.g., second region). Referring to page 17, lines 11-15 of the application as filed, “[i]n one implementation, the user places the tool impression 400 such that the outer region includes pixels of the object 410 (see region portion 414) and the central region 416 includes pixels of the background 412 but substantially none of the pixels of the object 410 to guide the selective editing operation of the tool.” The Applicants can find no reference in Col. 6, lines 39-40, or elsewhere in Hamburg to a tool impression having a first predefined region and a second predefined region as now asserted in claims 1, 26, and 51.

Further, the Applicants asserted in their Amendment and Response dated March 2, 2009 that “[w]hile Hamburg discloses a color match function that produces as an output a color match value that is indicative of the degree that the color associated with a *given pixel* matches the erasure color,” (Hamburg 7/67 - 8/3), the Applicants can find no reference in Hamburg to a

property distribution that outputs a fraction of *all the pixels* in a region of the tip profile that possesses a specific pixel property value.” The Office has responded in the Response to Arguments, Section 4, by asserting that “the features upon which applicant relies (i.e., property distribution that outputs a fraction of the pixels in a region) are not recited in the rejected claims(s).” The Applicants respectfully disagree.

Claims 1, 26, and 51 of the present application recite in part “a **first distribution** of a pixel property of the pixels in the **first predefined region** . . . [and] a **second distribution** of the pixel property of the pixels in the **second predefined region** . . .” (emphasis added). Hamburg’s “color match function” that the Office uses to purportedly anticipate to the Applicants’ “first distribution” and “second distribution” outputs a color match value that is indicative of the degree that the color associated with a given pixel matches the erasure color” (Hamburg 7/67 - 8/3). The Applicants can find no reference in Hamburg to a property distribution obtained from multiple pixels (claimed “the pixels”) in a predefined region of the tip profile that possesses a specific pixel property.

The Applicants also asserted in their Amendment and Response dated March 2, 2009 that “the Applicant can find no reference in Hamburg to *multiple* color match functions (e.g. a first color match function and a second color match function) applying to *multiple* tip regions (e.g. a first region and a second region) of the tip profile.” The Office has responded in the Response to Arguments, Section 5, by asserting that “the features upon which applicant relies (i.e., multiple color match functions applying to multiple regions) are not recited in the rejected claims(s).”

While the Applicants agree that “multiple color match functions” are not recited in the present claim language, since the Office was using the “color match function” of Hamburg to purportedly anticipate the “first distribution” and the “second distribution” of claims 1, 26, and 51, the Applicants used the language “multiple color match functions” rather than “multiple distributions” in making the argument in the Amendment and Response dated March 2, 2009. Claims 1, 26, and 51 of the present application recite in part “a **first distribution** of a pixel property of the pixels in the **first predefined region** . . . [and] a **second distribution** of the pixel property of the pixels in the **second predefined region** . . .” (emphasis added). Rewording the argument in terms of the immediately preceding claim language, the multiple distributions (i.e. “first distribution” and “second distribution”) are applied to multiple regions (i.e. “first predefined region” and “second predefined region”). The Applicants can find no teaching or

suggestion of multiple distributions of a pixel property applying to multiple predefined regions of a tool impression in Hamburg.

Since Hamburg fails to teach each and every element of independent claims 1, 26, and 51, the Applicants respectfully request reconsideration and withdrawal of the anticipation rejections to independent claims 1, 26, and 51 and dependent claims 2-9, 20-25, 27-34, and 45-50 which respectively depend therefrom.

Allowable Subject Matter


Claims 35-44 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In light of the arguments and amendments made herein, the Applicants believe that claims 35-44 are allowable in their current form. Thus, the Applicants respectfully request that claims 35-44 be allowed.

Conclusion

Claims 1-51 are currently pending in the application. The Applicants have fully responded to each and every objection and rejection in the Office action dated June 12, 2009 and believe that claims 1-51 are in condition for allowance. The Applicants therefore request a timely Notice of Allowance be issued in this case.

If the Examiner should require any additional information or believes any issues could be resolved via a telephone interview, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted this 10th day of September 2009.



Eric R Drennan
Registration No. 59,099
Customer No. 45346

HENSLEY KIM & HOLZER, LLC
1660 Lincoln Street
Suite 3000
Denver, Colorado 80264
720-377-0773 (TEL)
720-377-0777 (FAX)